

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GEORGE HERTZOG,

Petitioner,

v.

MAGGIE MILLER-STOUT,

Respondent.

Case No. C06-5287 RJB/KLS

ORDER DENYING APPLICATION
TO PROCEED *IN FORMA*
PAUPERIS, FOR THE
APPOINTMENT OF COUNSEL AND
FOR INDEFINITE STAY

This 28 U.S.C. § 2254 petition has been assigned to United States Magistrate Judge Karen L. Strombom pursuant to 28 U.S. C. § 636(b)(1) and Local MJR 3 and 4. Petitioner has filed an application to proceed *in forma pauperis*, requesting that he be allowed to proceed in this matter without having to prepay fees or costs; requests the appointment of an attorney, Stephen R. Hormel, to represent him in this habeas proceeding; and requests an indefinite stay until an attorney is assigned to him. (Dkt. # 15, 16). Petitioner originally filed his habeas petition in the Eastern District of Washington on May 24, 2006, and paid the \$5.00 filing fee. (Dkt. # 5). After the case was transferred to the Western District, service was ordered by this court at no expense to petitioner.

ORDER- 1

(Dkt. # 7). Thus, petitioner's request to proceed *in forma pauperis* is moot.

Additionally, there is no right to have counsel appointed in cases brought under 28 U.S.C. § 2254 unless an evidentiary hearing is required, because the action is civil, not criminal, in nature. See Terravona v. Kincheloe, 852 F.2d 424, 429 (9th Cir. 1988); Brown v. Vasquez, 952 F.2d 1164, 1168 (9th Cir. 1992); and Rule 8(c) of the Rules Governing Section 2254 Cases in the United States District Courts. An evidentiary hearing has not been granted in this case and the claims in the petition are adequately set forth and articulated. Petitioner has not demonstrated that an evidentiary hearing is necessary or that he is entitled to one. It is apparent that the issue before the court – whether the petition is clearly time-barred – may be resolved solely by reference to the state court record. *See, e.g., Campbell v. Wood*, 18 F.2d 662, 679 (9th Cir.) (en banc), (cert, denied, 114 S. Ct. 2125 (1994)).

Accordingly, petitioner's motions to stay, for appointment of counsel and for leave to proceed *in forma pauperis* (Dkt. # 15, 16) are **DENIED**.

The clerk is directed to send copies of this order to petitioner and counsel for respondent.

DATED this 5th day of September, 2006.



Karen L. Strombom
United States Magistrate Judge